

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Amendment of the Commission's Rules
to Permit Flexible Service Offerings
in the Commercial Mobile Radio Services

WT Docket No. 96-6

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ in response to the Notice of Proposed Rulemaking issued by the Commission on January 25, 1996,² hereby submits its comments in support of the Commission's proposal to allow expanded service offerings by broadband Commercial Mobile Radio Service ("CMRS") providers.³ RCA also submits that implementation of the Telecommunications Act of 1996 ("1996 Act")⁴ requires the Commission's recognition that broadband CMRS licensees designated as eligible telecommunications carriers are entitled to equal treatment as Federal universal service recipients. In support thereof, RCA shows the following:

^{1/} RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside.

^{2/} In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, Notice of Proposed Rulemaking ("Notice"), released February 16, 1996.

^{3/} "Broadband CMRS" services include Broadband Personal Communications Service ("PCS"), Cellular Radiotelephone Service, and Specialized Mobile Radio Service. *074*

^{4/} Pub. L. No. 104-104, 110 Stat. 56 (1996).

I. Broadband CMRS Providers Should Have Complete Flexibility To Provide Both Mobile And Fixed Services In Response To Market Demand.

1. RCA agrees that the competitive market, rather than regulations, should dictate the services available from broadband CMRS providers. The existing and expanding competitive environment mandates a flexible regulatory approach which recognizes the efficiencies of market allocation of resources and does not hinder a service provider's ability to respond to perceived demand.

RCA therefore supports the Commission's decision to clarify the scope of permissible services that may be provided by broadband CMRS licensees. Broadband CMRS providers explicitly should be authorized to offer any fixed communications service for which they determine the existence of market demand, in addition to the mobile and related fixed services now permitted.

2. Implementation of the Commission proposal will result in a wide variety of efficiencies. Business decisions based upon economic and marketplace considerations, rather than the artificial regulatory barriers, will result in efficient utilization of licensed spectrum by authorized users. In addition, as the Commission notes, a flexible regulatory scheme will eliminate the need for the Commission "to initiate a rulemaking or grant multiple waivers each time a broadband CMRS provider or new entrant to a market wishes to adjust its operational mode to respond to consumers changing communications requirements."⁵

3. Finding that flexible utilization of spectrum is in the

⁵/ Notice at para. 9.

public interest, the Commission has already adopted rules which allow broadband CMRS licensees to provide a wide variety of mobile services and some forms of fixed service. For example, the Commission's definition of "personal communications services" includes all "[r]adio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks."⁶ The Commission's PCS rules permit licensees to provide any fixed service that is ancillary to their mobile operations.⁷

4. The Commission has raised a concern regarding the sufficiency of spectrum available for mobile services if fixed services are allowed.⁸ Given the competitive market for mobile services, RCA submits that the efficiency of the marketplace will ensure that spectrum is utilized in a demand-sensitive manner; in fact, responsiveness to consumers is better ensured by the function of the market than by regulatory mandate.

5. The public benefits of competition, including a wider variety of services at lower costs, require that the suppliers of those services should be able to respond to changing market demand, free from unnecessary regulatory restraints. As the Commission notes, limiting permissible uses of broadband CMRS spectrum may inhibit carriers who could otherwise efficiently use radio links to replace existing wireline service or to bring new or additional

⁶/ 47 C.F.R. § 24.5.

⁷/ 47 C.F.R. § 24.3.

⁸/ Notice at para. 14.

service to rural or less lucrative areas.⁹ RCA submits that removing regulatory barriers to provide flexibility in service offerings will serve the public interest by promoting efficient spectrum utilization and eliminating unnecessary regulatory burdens for both licensees and the Commission.

II. Broadband CMRS Licensees Providing Universal Service Are Eligible Recipients of USF Funds.

6. Pursuant to the 1996 Act, the Commission must adopt regulations concerning universal service.¹⁰ Section 102 of the 1996 Act¹¹ amends Section 214¹² by adding new subsection (e):

a common carrier designated [by a State commission] as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received-

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

7. The Act purposefully does not distinguish the technology by which telecommunications carriers provide the specific service

⁹/ Notice at para. 5.

¹⁰/ Pub. L. No. 104-104, § 254.

¹¹/ Pub. L. No. 104-104, § 102(a).

¹²/ 47 U.S.C. § 214.

offerings to be defined as "universal service."¹³ It is clear, therefore, that where broadband CMRS providers meet the requirements set forth above, they constitute "eligible telecommunications carriers" and are, therefore, eligible to receive universal service support under the 1996 Act's Section 254.¹⁴

8. The fact that CMRS providers are eligible to become universal service providers and receive universal service support should not be construed as an obligation that can be imposed upon any individual CMRS provider or class of provider. The Act clearly contemplates and encourages the provision of competitive universal service. The designation of more than one universal service provider is, in fact, mandated in areas that are not served by an incumbent rural local exchange carrier.¹⁵ The initial decision to provide universal service by a CMRS provider or any other telecommunications carrier that is not an incumbent local exchange carrier is a business decision that clearly should be left to the

¹³/ Section 254(a)(2) of the 1996 Act requires the Joint Board and Commission to define the services "that are supported by Federal universal service support mechanisms and a specific timetable for implementation." Congress defined "universal service" as "an evolving level of telecommunications services that the Commission shall establish periodically . . . taking into account advances in telecommunications and information technologies and services." Pub. L. No. 104-104, § 254(c)(1).

¹⁴/ Pub. L. No. 104-104, § 254.

¹⁵/ 47 U.S.C. § 214(e)(2).

election of the competitive service provider.¹⁶

III. Conclusion

9. RCA submits that the public interest will be served by the Commission's expeditious clarification that broadband CMRS providers may utilize licensed spectrum to offer any fixed service in addition to the mobile and related fixed services now permitted under the rules. Complete flexibility in service provision will result in efficient spectrum utilization and reduced regulatory burdens. In addition, pursuant to the 1996 Act, and in order to promote universal service, the Commission should formally recognize that in service areas where broadband CMRS licensees provide universal services and are designated as eligible telecommunications carriers, they are, by definition, eligible recipients of funds from the Commission's universal service programs.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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^{16/} The 1996 Act does provide that, in cases of unserved communities, the Commission (with respect to interstate services) and the State (with respect to intrastate services) shall determine which carrier or carriers are best positioned to provide universal services and shall order such carrier(s) to provide such services. 47 U.S.C. § 214(e)(3).

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing **Comments of the Rural Cellular Association** was served on this 1st day of March 1996, via hand delivery, to the following parties:


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